

# EXHIBIT 12

1                   **UNITED STATES DISTRICT COURT**  
2                   **MIDDLE DISTRICT OF FLORIDA**  
3                   **ORLANDO DIVISION**

4                   **UNITED STATES OF AMERICA,**

5                   Plaintiff,

6                   v.

7                   **BRIAN PATRICK DURNING,**

8                   Defendant.

Case Number:  
6:22-cr-00102-WWB-RMN-1

Orlando, Florida  
September 26, 2023  
3:48 P.M. - 6:12 P.M.

11                  **REDACTED TRANSCRIPT OF SENTENCING**  
12                  **BEFORE THE HONORABLE WENDY W. BERGER**  
13                  **UNITED STATES DISTRICT JUDGE**

14                  APPEARANCES:

15                  For the Plaintiff:                   Michael Felicetta  
16   Courtney D. Richardson-Jones  
17   U.S. ATTORNEY'S OFFICE  
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19   Suite 3100  
20   Orlando, Florida 32801

21                  For the Defendant:                   Jeremy Lasnetski  
22   John Gihon  
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25   Suite 520  
   Jacksonville, Florida 32202

Proceedings recorded by real-time mechanical stenography.  
Transcript produced by computer-aided transcription.

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## PROCEEDINGS

(Proceedings commenced at 3:48 P.M.)

**THE COURTROOM DEPUTY:** Case Number 6:22-cr-102,  
United States of America v. Brian Patrick Durning.

Counsel, please state your appearances for the record.

**MR. FELICETTA:** Good afternoon, Your Honor.

Michael Felicetta, Courtney Richardson-Jones on behalf of the Government. We're joined at counsel table by Special Agent David D'Arcangelis with the FBI.

**THE COURT:** Okay.

MR. LASNETSKI: Good afternoon, Your Honor.

Jeremy Lasnetski here on behalf of Brian Durning, and partner John Gihon is with us as well.

**THE COURT:** Okay. All right. Mr. Durning, can you raise your right hand for me, please, sir. Do you swear -- you don't have to stand.

(Defendant sworn.)

THE COURT: All right. Mr. Durning, back on June 22nd of this year, a jury found you guilty of the lesser included offenses in Counts 1 and 3 of the superseding indictment, charging you with -- finding you guilty of simple assault, in violation of Title 49 of the United States Code, Sections 46506, and Title 18 of the United States Code, Sections 113(a)(5); and Count 2 of the superseding indictment,

1 I don't know if I -- if I'm in that. I know that I'm not.  
2 That is amazing, and that is a testament not to him on a bad  
3 day, not to him having a bad week -- that is a testament to his  
4 52 years of living and most likely to his mother and father and  
5 his stepfather in the back row.

6 Again, I appreciate the opportunity to speak to you.  
7 Thank you.

8 THE COURT: Thank you.

9 MR. LASNETSKI: Your Honor, Mr. Durning would like to  
10 speak to the Court.

11 THE COURT: All right. Come on up, Mr. Durning.

12 THE DEFENDANT: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 THE DEFENDANT: Thank you for the opportunity to  
15 address this Court.

16 I'd like to say at the very beginning, I am sincerely  
17 sorry for Miss B█'s distress not only that evening, her  
18 family, and then thereafter. There was no way on God's green  
19 earth I ever would think to -- that I could even possibly  
20 create this; and yet I did, and for that I am sorry.

21 I had absolutely -- I am -- very quickly had a  
22 misguided effort to simply sleep on the plane, get comfortable.  
23 I had alcohol at the -- excuse me -- at the airport bar, did  
24 take a sleeping pill some hour or so after the plane was taking  
25 off, and then there afterwards had a glass of wine. I made a

1           terrible choice regarding alcohol. That is -- that is on me.  
2           And, unfortunately, yes, I have done that in the past. This  
3           time compounded it by mixing alcohol with medication.

4           Again, I am very ashamed to have created a painful  
5           experience for anybody, much less a young person who is  
6           starting out -- for all practical purposes, starting their  
7           life. And I do reflect. I do pray for this young lady, for  
8           her family, for their comfort, and for them to receive God's  
9           blessings in their continued journey of their own lives.

10          Since last year -- and last year, meaning since about  
11         the time of the arrest, I've been on a very -- 24-7 mission to  
12         become the best Brian Patrick Durning that I can be. And for  
13         me what does that entail? That entails mentally, spiritually,  
14         and physically. This is a conscientious effort that I do every  
15         single moment of day right up to standing here in front of you.  
16         And if I could just quickly break down what that means to me.

17          Upon my return to California, on the mental side, I  
18         went, as David just mentioned, diligently working on my craft  
19         day and night; and my craft is providing the fitness industry  
20         with both real estate and equipment services -- fitness  
21         equipment, obviously. I began this some couple months prior to  
22         15 months ago, before boarding the plane, and had a little  
23         hiccup, you know, in business. Stopped for a bit, and I got  
24         back to it. And I was blessed to develop this with, you know,  
25         a lot of help from David and just visiting hundreds of sites

1       throughout Southern California; had just personal belief,  
2       dedication, and was able to create a respectable living out of  
3       this, which is currently at its infancy. Organizing this was  
4       my mental framework seven days a week.

5                     Spiritually, right about one year ago, probably  
6       13 months ago or so, I engaged in deep therapy at Livingood --  
7       Livingood Center, which is in Costa Mesa, California. I  
8       started that out three days a week, three hours per session.  
9       That eventually went to two days a week, two hours per session  
10      right up through the week before trial. Through this process I  
11      just came to, in a nutshell, discover that self-patience plus  
12      discipline usually will equal peace and prosperity.

13                  Every single day and to right now I practice  
14      meditation, journaling, reading, and gratitude for the  
15      blessings that we receive every day, something as simple as a  
16      glass of water, a nice day outside, all the small things.

17                  One of the blessings that I did receive along this  
18      way was to reengage my faith. I honestly hadn't attended  
19      regular church services in years. Did so. And I started going  
20      just, you know, twice a week. And then oftentimes, because I  
21      have a flexible schedule, I would just stop in to a church many  
22      times, just being alone in the building and kind of a  
23      reflection time one on one with God, if you will.

24                  Finally, I found a home at -- church-wise at Sacred  
25      Heart Catholic Church in Altadena, California. Been very

1 blessed to take counsel with Father Gilbert Guzmán with him up  
2 until the trial date. Very excited to -- you know, I  
3 noticed -- talked to him and noticed there's a lot of people  
4 there by themselves, and so one of the things I'd like to -- or  
5 will be doing when I get back there is kind of just -- you  
6 know, kind of have a group for those of us who are just alone  
7 at mass per se or don't have a number of family members to  
8 attend with and look forward to being of service in other ways  
9 that I can.

10 Physically, I embarked on -- I've always been pretty  
11 active and just, you know, made a regimented effort to do  
12 something five days a week. Fortunately, in California we're  
13 blessed to have a lot of mountains. So I did a lot of that and  
14 then just maintained a disciplined regimen of diet, sleep and  
15 exercise. And my reasoning behind this is just to create the  
16 most vibrant, energetic person possible and create the most  
17 fulfilling days that I possibly can.

18 Socially, I just mentioned some of the things I had  
19 done with my free time. You know, engage with friends on just  
20 doing local mountains. Found a couple local meditation groups  
21 just to check out, again, a little bit on my own. I do have,  
22 out in California, a very good family -- extended family  
23 relationship. My friend, Tania Carmenate -- I've been blessed  
24 to be a part of her family and been doing things from Orlando's  
25 90th birthday down to little Hazel's 9th birthday, and then all

1       those things in between, like Thanksgiving, Christmas, and then  
2       just basic stuff of helping each other out as neighbors. You  
3       know, "Can you grab this at the store for me? I'm not feeling  
4       well," that type of thing.

5                 And then I've been -- also, a lot of these things  
6       that -- sitting here in front of you, you know, sharing these  
7       with a couple gentlemen you've already heard, other folks in  
8       this room, and then those who you've read some of their letters  
9       that are literally around all four corners of the country.

10               Obviously --

11               **THE COURT:** And I tell you that the letters -- your  
12       friends speak very highly of you, and the descriptions that  
13       they give you -- give of you in their letters belies the  
14       conduct that this Court sat and listened to throughout the  
15       trial. And so -- I mean, I appreciate you giving a statement.  
16       I want you to continue, but I just -- I mean, I read all of the  
17       letters --

18               **THE DEFENDANT:** Okay.

19               **THE COURT:** -- and I wondered is this the same person  
20       that -- that sat before me in a trial for three days.

21               **THE DEFENDANT:** I'm sorry. Did you want me to answer  
22       or --

23               **THE COURT:** No. I'm just -- that's just in my head,  
24       and I appreciate the fact that you have surrounded yourself  
25       with so many people that you've been a very positive influence

1       in their life, and that's worth noting.

2           **THE DEFENDANT:** Thank you. I appreciate it. Would  
3       you like me --

4           **THE COURT:** You can continue, yeah.

5           **THE DEFENDANT:** Thank you.

6           Obviously, June 22nd, I believe it was, of this year,  
7       I've been at the Orange County correctional facilities.

8           Obviously, I knew this was a possibility and was very thankful  
9       to be at my best, which I just discussed, spiritually,  
10      mentally, physically. Every moment studying and change created  
11      in that previous year from about the -- I have taken with me.

12           While my surroundings have changed, my mindset and  
13      mission have not. And I do believe that we are not a product  
14      of our surroundings; rather, our surroundings are a product of  
15      us. Every day, even -- it is challenging at times; but,  
16      regardless, I still engage in reading, the meditation,  
17      gratitude, and the prayer all previously discussed.

18           My future plans are very laid out and much -- much of  
19      what I just already said, you know, between the work, physical,  
20      the spiritual.

21           I've been -- had the opportunity and what I feel is  
22      the obligation to share some of my life, if you will, with  
23      some -- some of my -- we'll call them "bunkies" because, you  
24      know, we have an eight-man cell, and a lot of these guys are  
25      younger; and, you know, they're young enough to be my sons.

1 -00-

2 CERTIFICATE OF REPORTER

3 I certify that the foregoing is a correct transcript of the  
record of proceedings in the above-titled matter.

4 *Heather Suarez*

5 Heather Suarez, RDR, CRR, FCRR, FPR-C, WA CCR, CA CSR  
6 WA CCR License #23017624 | CA CSR License #14538

7 Date: 10/29/2023

8 -00-

9 CERTIFICATE OF REDACTION

10 I certify that the foregoing is a true and correct copy of the  
transcript originally filed with the clerk of court on  
11 10/29/2023 and incorporating redactions of personal  
12 identifiers, in accordance with Judicial Conference policy.

13 Redacted characters appear as a black box in the transcript.

14 *Heather Suarez*

15 Heather Suarez, RDR, CRR, FCRR, FPR-C, WA CCR, CA CSR  
16 WA CCR License #23017624 | CA CSR License #14538

17 Date: 10/29/2023